

**REMARKS**

Please reconsider the present application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application.

**Deposition of Claims**

Claims 1-21 are pending in the present application. Of these claims, claim 1 is independent. The remaining claims depend, directly or indirectly, from claim 1.

**Allowable Subject Matter**

Claims 3-21 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As discussed below, the base claims 1 and 2 are believed allowable. Thus, rewriting claims 3-21 in independent form is deferred at this time.

**Claim Amendments**

Claims 1, 4, 6, 11, and 21 have been amended solely to clarify the correct minor formalities. Also, all of the claims have been amended to remove reference numbers. No new matter has been added by way of the amendment. These amendments are not made in view of prior art.

**Objection(s)**

Claims 4, 6, and 12 are objected to for informalities.

Specifically, claim 6 is objected to for containing a misspelled word “tzen.” By way of this reply, claim 6 has been amended to correct the misspelling of the word to “then.”

Claim 4 is objected to for containing a misspelled word “opsition.” By way of this reply, claim 4 has been amended to correct the misspelling of the word to “position.”

Claim 12 is objected to for an informality. Specifically, claim 4 is objected to for containing a misspelled word “comprise.” By way of this reply, claim 4 has been amended to correct the misspelling of the word to “comprises.”

The claims have been amended in view of all of the objections made by the Examiner. Accordingly, withdrawal of these objections is respectfully requested.

#### **Rejection under 35 U.S.C. § 112**

Claim 1 stands rejected under 35 U.S.C. § 112 second paragraph, as being indefinite. Specifically, the Examiner objected to the phrase containing the words “in particular” as it was unclear whether that was an intended limitation of the claim. Claim 1 has been amended to remove the phrase. Accordingly, withdrawal of this rejection is respectfully requested.

#### **Rejection under 35 U.S.C. § 103**

Claims 1 and 2 stand rejected under 35 U.S.C. § 103 (a) as being obvious over US Patent No. RE38, 400 (“Kowall”) in view of U.S. Patent Application Publication No. 2005/0242762 (“Assan”). For the following reasons, this rejection is respectfully traversed.

Kowall is cited as disclosing a tailgate on a passenger van type vehicle body that is operated by an electric motor powered actuator. The Examiner admits that Kowall fails to teach or suggest any cooperation of first and second sensor devices to determine angular position of the tailgate. However, the Examiner cites Assan as teaching the combination of sensors recited in claim 1 and notes that it would have been obvious to one of ordinary skill in the art to

combine these references to control movement of the tailgate to prevent damage to the system, if an obstacle is occurred. Applicant respectfully disagrees.

The claimed invention involves dividing the entire pivot angle of a vehicle door into at least three successive zones (pivot angle ranges). The individual pivot angle ranges being determined by means of a first sensor device suitable for detecting absolute values. The pivot angle of the vehicle door within the individual zones is then detected with the aid of a second sensor device, which comprises at least one incrementally operating measured value detector (see paragraph [0008]). Thus, the angle ranges determined by the combination of the first and the second sensor device are mutually adjacent so that the adjacent angle ranges form a successive pivoting movement zone of a single vehicle door. Accordingly, claim 1 requires *inter alia* “at least three mutually adjacent pivot ranges ... covering the entire pivot angle ... of the vehicle door.”

In contrast to the claimed invention, Assan discloses the wiper system in which two wiper areas are partly overlapped. These wiper areas are *not mutually adjacent* as successive movement zones of the wipers. Accordingly, Assan fails to show or suggest at least the above-mentioned limitations of the claimed invention. Thus, Kowall and Assan, whether considered separately or in combination, fail to teach all of the limitations of claim 1.

Moreover, there exists no motivation to combine the cited references. Applicant respectfully notes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986 (Fed. Cir. 2006). In other words, regardless of whether prior art references can be combined, there must an indication within the prior art references *expressing desirability* to combine the references. *In re Mills*, 916

F.2d 680 (Fed. Cir. 1990)(emphasis added). The Examiner must show “reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for a combination in the manner claimed” *In re Rouffet*, 47 USPQ2d 1453 (Fed.Cir. 1998).

In the present case, the claimed invention is directed automatically actuating a vehicle door, such as a vehicle tailgate. Kowall also relates to actuation of a vehicle tailgate. However, Assan is wholly unrelated to the actuation of a vehicle tailgate. Instead, Assan is related to avoiding a first wiper colliding with a second wiper in an overlapping wiping area on a vehicle windscreen. As explicitly recited in Assan, this issue of collision avoidance only occurs in specific counter-rotation or butterfly wiper systems. There exists nothing in Kowall or Assan that would lead one skilled in the art faced with the actuation of a vehicle door to turn to the wiper system of Assan. Accordingly, it is improper to combine the references against the present claims.

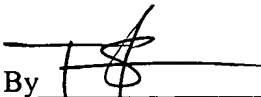
In view of the above, (1) the combination of Kowall and Assan is improper and (2) Kowall and Assan, whether considered separately or in combination, fail to show or suggest all of the limitations recited in independent claim 1. Thus, independent claim 1 is patentable over Kowall and Assan for at least the reasons set forth above. Dependent claim 2 is allowable for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

## Conclusion

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 17089/005001).

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Respectfully submitted,

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